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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,424	12/30/2003	Joseph Di Palma	659-2079	4674

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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/750,424	PALMA ET AL.	
	Examiner	Art Unit	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>various(4)</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statements

The information disclosure statements (IDS) submitted on July 22, 2004, February 16, 2005, May 13, 2005, and September 14, 2005 were filed after the mailing date of the Application on December 30, 2003. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 22-27 have been renumbered 23-28.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the

international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15, 17-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Ling et al (WO 02/39943).

With respect to **Claims 1-7,18-22**: Ling teaches absorbent article 20 stored in packaging 62 having flap 70, back portion 106, middle portion 104 that forms the exterior of the pocket 64, and front portion 108, contiguous with back portion 106, that forms flap 70. Flap 70 and/or pocket 64 of packaging 62 include a visual indicator 110 disposed thereon for distinguishing the edge of said flap from said pocket and for a guide for grasping the edge of flap 70 to open package 62. The visually contrasting treatments collectively defining indicator 110 include a first color on at least a portion of an exterior surface 112 of flap 70 and a second color on at least a portion of the exterior surface 114 of pocket 64. (Page 8, ¶ 2 – Page 9, ¶ 2)

With respect to **Claims 8-10,17,23,25**: Ling teaches forming the flap 70 having a color that is the same as the raw material color and disposing text or background color on a portion of pocket 64. Examiner asserts that since Ling teaches text, such text is interpreted herein as a pattern that can be printed on either the flap 70 or the pocket 64. (Page 9, ¶ 2)

With respect to **Claim 11**: Ling teaches that the flap 70 and/or pocket 64 includes a tactile indicator in the form of a textured portion. (Page 10, ¶ 1)

With respect to **Claim 12-15**: Please see the rejections of Claims 1-7 and 8-10 as these rejections collectively address all of the limitations of Claims 12-15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 16, 24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ling et al (WO 02/39943).

With respect to **Claim 16,24**: Ling does not teach disposing an arrow shape for the visual indicator, however does teach that the visual indicator, be it a color or text, is printed on the flap 70 and/or pocket 64. An arrow is a graphic that is capable of being printed on said flap and/or said pocket, therefore it would be obvious to one of ordinary skill in the art to modify the visual indicator taught by Ling to consist of an arrow shape directed at the margin of either or both of the flap or pocket rather than a color or text.

With respect to **Claims 26-28**: Please see the rejection of Claim 18 in addition to the following: Ling teaches a receptacle for plural packages 62 having a flap and pocket wherein the flap has

a length of about 5.1 cm and the receptacle has a height of 9.5-14 cm. If the visual cue were printed upon the entire flap, the cue would have a length that is 36-53% of the height of the packaging component, which is the dimension that would correspond to the length of pocket 64 of an individual package 62. Since Ling teaches that the edge margins of the flap and the pocket are printed upon, the visual indicator 110 must have a length that is less than 33% of the height of the packaging component. Ling does not teach that the visual indicator length is less than 25% (Claim 27) or less than 10% (Claim 28) of the height of the receptacle. Ling also does not teach dimensions for a visual indicator 110 on a flap or pocket of wrapper 24 that encloses a single article 22. It would be obvious to one of ordinary skill in the art to maintain these ratios to provide a similar visual indicator on each wrapper 24 by scaling down the dimensions, since the construction of the larger receptacle is substantially identical to that of an individual wrapper 24 and provides the same function of storing an absorbent article. Such scaling would therefore not be patentable over the prior art of Ling. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall* (105 USPQ 233, CCPA, 1955).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', written over the printed name and title.